

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

**COMMENTS OF
THE AMERICAN CABLE ASSOCIATION
ON THE FAIRPOINT COMMUNICATIONS, INC.
PETITION FOR WAIVER OF 47 C.F.R. § 54.312(b)(2) and (3)
AND CONDITIONAL ELECTION OF INCREMENTAL CAF SUPPORT**

The American Cable Association (“ACA”) respectfully submits these comments in response to the *Petition* of Fairpoint Communications, Inc. (“Fairpoint”) for a waiver of certain provisions in 47 C.F.R. § 54.312(b), which were adopted by the Commission in last year’s *Connect America Fund Order*.¹ More specifically, Fairpoint requests a waiver of (1) the requirement that it “connect to one unserved location for every \$775 in incremental support accepted” and (2) the 90-day window for acceptance of support so that it can make a conditional election.² ACA comments are directed only to the request to waive the \$775 requirement.

¹ See Fairpoint Communications, Inc. Petition for Waiver of Sections 54.312(b)(2) and (3) of the Commission’s Rules and Conditional Election of Incremental CAF Support, WC Docket Nos. 10-90, 05-337 (filed Sept. 10, 2012) (“*Petition*”); see also Wireline Competition Bureau Seeks Comment on Fairpoint Communications Petition for Waiver of Certain High-Cost Universal Service Rules, WC Docket Nos. 10-90, 05-337, Public Notice, DA 12-1473 (Sept. 11, 2012) (“Public Notice”) and *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011); *pets. for review pending sub nom. In Re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011) (“*Connect America Fund Order*”).

² See Public Notice at 1.

In the *Connect America Fund Order*, the Commission established the Phase I support program as a “transitional distribution mechanism”³ that would “provide an immediate boost to broadband deployment in areas that are unserved by any broadband provider”⁴ while the Commission was developing the Phase II support regime.⁵ The program has defined, “concrete broadband deployment obligations.”⁶ Carriers electing to receive support in areas where they are eligible “will be required to deploy broadband to a number of locations equal to the amount it accepts divided by \$775.”⁷ The Commission arrived at this support amount by examining submissions from a variety of sources, including estimates of per-location costs from specific price cap carriers,⁸ the cost model developed by the ABC Coalition (of which Fairpoint) is a member)⁹ and the cost model used in developing the National Broadband Plan.¹⁰ The Commission concluded that “\$775 per location figure represents a reasonable estimate of an interim performance obligation for this one-time support.”¹¹ Moreover, the Commission’s program contemplated that “carriers that cannot meet our broadband deployment requirement may decline to accept incremental support or may choose to accept only a portion of the amount

³ *Connect America Fund Order*, ¶132.

⁴ *Id.*, ¶137.

⁵ *See id.*, ¶132.

⁶ *Id.*, ¶137.

⁷ *Id.*, ¶138.

⁸ *See id.*, ¶143.

⁹ *See id.*, ¶142.

¹⁰ *See id.*, ¶141.

¹¹ *Id.*, ¶144.

for which they are eligible.”¹² In sum, the Phase I incremental support program is limited both in time¹³ and in its aim, and it does not seek “to create a new source of ongoing support.”¹⁴

Two price cap carriers, Frontier Communications Corp. and Windstream Communications, Inc., and the United States Telecom Association¹⁵ sought reconsideration of the *Connect America Fund Order*, requesting, among other things, that the Commission alter the requirement that a price cap carrier accepting support deploy broadband service “to a number of unserved locations equal to the amount each carrier accepts divided by \$775” by adopting a carrier-specific approach that would effectively increase the amount of support per location.¹⁶ After receiving comment on the reconsideration petitions, on April 25, 2012, the Commission¹⁷ issued a *Second Reconsideration Order* addressing the petitions to reconsider portions of its rules (§ 54.312(b)) regarding the requirements for use of Phase I support.¹⁸ In that order, the Commission declined the reconsideration petitions requesting “to relax the nationwide deployment requirement and...to establish carrier-specific requirements.”¹⁹ The Commission

¹² *Id.*

¹³ The Commission noted that it may extend the program for another brief period if the Phase II regime is not ready. *See Connect America Fund Order*, ¶148.

¹⁴ *Connect America Fund Order*, n. 227.

¹⁵ *See* Frontier Communications Corp. and Windstream Communications, Inc., Petition for Reconsideration and/or Clarification, WC Docket Nos. 10-90 et al. (Dec. 29, 2011) (“Frontier/Windstream Reconsideration Petition”); United States Telecom Association, Petition for Reconsideration, WC Docket Nos. 10-90 et al. (Dec. 29, 2011).

¹⁶ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Second Order on Reconsideration, FCC 12-47 (Apr. 25, 2012), ¶5 (“*Second Reconsideration Order*”). *See* also Frontier/Windstream Reconsideration Petition at 12-20.

¹⁷ The *Second Reconsideration Order* was released at the same time the Commission announced CAF Phase I incremental support amounts for each price cap LEC. *See Wireline Competition Bureau Announces Support Amounts for Connect America Fund Phase One Incremental Support*, Public Notice, WC Docket Nos. 10-90, 05-337, DA 12-639 (Apr. 25, 2012).

¹⁸ *See Second Reconsideration Order*.

¹⁹ *Id.*, ¶20.

concluded that “nothing in the petitions for reconsideration calls the Commission’s conclusion into question or suggests that any other nationwide number would be more appropriate.”²⁰ The Commission stated that the Phase I program “is not intended to be a long-term program or to serve all broadband deployment needs.”²¹ That is the purpose of the Phase II regime.²²

The Frontier *Petition* essentially requests the Commission reconsider the decision made in the *Connect America Fund Order* and reconsidered in the *Second Reconsideration Order*, and adopt a carrier-by-carrier approach to distribution of Phase I incremental support. It bases its waiver request on its belief that “the Commission significantly underestimated the cost of broadband deployment to unserved areas, which is demonstrated by the fact that price cap carriers did not accept more than \$185 million of CAF Phase I incremental support.”²³ However, as the Commission’s orders make clear, the decision to adopt the \$775/location requirement was based on a detailed and reasoned analysis of the information and comments in the dockets. Moreover, the fact that more than 50 percent of the support was declined does not suggest the Commission’s decision was unfounded. The record demonstrates that the Commission considered that carriers might not accept Phase I incremental support. The Commission itself stated that this support “was designed to reach a significant number of relatively low cost locations, not to ensure that the entire \$300 million offered for Phase I is accepted... and

²⁰ *Id.*, ¶18. *See also id.*, ¶17, which emphasizes the transitional nature of Phase I as the Commission develops a cost model to determine Phase II support (“In adopting the \$775 figure, the Commission recognized that, in the absence of a fully developed cost model, the choice of a per-location support amount necessarily involved an exercise in judgment. The Commission weighed a variety of considerations, including the fact that resources for this interim mechanism were limited and the goal to ‘spur immediate broadband deployment to as many unserved locations as possible.’”).

²¹ *Id.*, ¶23.

²² *Id.*

²³ *See Petition* at 6.

explained that declined support ‘may be used in other ways to advance our broadband objectives pursuant to our statutory authority.’”²⁴

ACA understands the frustration of the price cap carriers with the Phase I program,²⁵ but the Commission intentionally created this program for a limited purpose: to jumpstart broadband deployment by these carriers to unserved locations. It was not designed as a long-term support mechanism and should not be fundamentally altered to achieve that aim. That is left to Phase II and the development of the cost model, which is now underway.

ACA recognizes that Phase I may be extended for a limited time if the Phase II regime is not finalized. While it concurs with the Commission’s overall objective “to provide a boost to broadband service deployment in the near term” to unserved areas with very low broadband speeds,²⁶ should the Commission extend the program and consider increasing the amount of support per location for next year, ACA suggests that it use this opportunity to consider the

²⁴ See *Second Reconsideration Order*, ¶20. ACA also notes that, in its *Petition*, Fairpoint is seeking to deploy broadband to 697 locations with support of \$2,831,783 or \$4,062 per unserved location. This amount is five times greater than permitted under the current rule.

²⁵ ACA, for instance, commented that the Commission should not permit price cap carriers to serve unserved locations in census blocks where non-incumbent providers offered broadband service and recommended that the Commission establish a more rigorous process to ensure a location is unserved. See *Ex Parte* Letter from Ross Lieberman, American Cable Association, and Steve Morris, National Cable & Telecommunications Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (Mar. 29, 2012) and Opposition of the American Cable Association, WC Docket Nos. 10-90 et al. at 13 (Feb. 9, 2012). Also see *Ex Parte* Letter from Thomas Cohen, Counsel for the American Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (Apr. 19, 2012) where ACA proposed the adoption of additional accountability measures for support recipients (“As a condition to receiving support in any area, a price cap LEC should provide information about both currently unserved locations and planned deployments to unserved locations, including the specific locations to be served and the current network facilities serving those locations and any broadband services offered. Price cap LECs should also identify the locations where broadband will be deployed pursuant to merger commitments, in which CAF Phase I support cannot be used, prior to receiving this support.”).

²⁶ *Second Reconsideration Order*, ¶26.

following additional modifications to the program. Given the fact that cable operators are accelerating the pace at which they are deploying networks and bringing broadband service to increasingly more rural (less dense) areas,²⁷ and some price cap LECs elected not to accept any Phase I program support in their service areas,²⁸ the Commission should enable cable operators and other non-price cap LECs to participate in the Phase I incremental support program. It also should ensure that any new Phase I support is awarded only in areas where non-incumbent providers are not offering service today – as determined both by the National Broadband Map and supplemental information submitted by providers – or where it is clear they have no incentive or capability to do so (i.e. higher cost areas).²⁹ This would encourage private sector deployments and effectively target scarce support to the highest-cost areas where there is no commercial business case. Lastly, to ensure support is used only for the intended purpose, the Commission should adopt additional accountability measures, including a requirement that a recipient declare at the time it receives support the specific locations it plans to serve.

In conclusion, the Commission has twice rejected the pleas of price cap carriers to alter the \$775/location requirement – once in the *Connect America Fund Order* and again the *Second Reconsideration Order*. In the text of both, the Commission rightly emphasized the limited nature of the Phase I program, which only enables price cap carriers and no other entities to obtain support, and its focus on developing a cost model under which it would award

²⁷ See e.g. *Ex Parte* Letter from Thomas Cohen, Counsel for the American Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (Mar. 19, 2012) and *Ex Parte* Presentation of Mediacom Communications, WC Docket No. 10-90 et al. (June 11-12, 2012).

²⁸ AT&T, Verizon and Virgin Islands Telephone Co.

²⁹ ACA, for instance, recommends that the Commission exclude the provision of support in census blocks that are adjacent to operating territories of non-incumbents.

substantially more support for the far-reaching Phase II regime. In its *Petition*, Fairpoint provides no new rational for the Commission to change course, and consequently, the *Petition* should not be granted.

Respectfully submitted,



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